

AMENDED IN ASSEMBLY JUNE 23, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 425

**Introduced by Senator Calderon
(Coauthors: Senators Evans, Gaines, and Strickland)**

February 16, 2011

An act to amend Sections 310, ~~597.5, 597b, 597c, 597h, 597i, 597j,~~
~~597h,~~ and 598.1 of the Penal Code, relating to cruelty to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, Calderon. Cruelty to animals: fighting.

(1) Existing law provides that any minor under 16 years of age who visits or attends any prizefight, cockfight, or place where any prizefight, or cockfight, is advertised to take place, and any owner, lessee, or proprietor, or the agent of any owner, lessee, or proprietor of any place where any prizefight or cockfight is advertised or represented to take place who admits any minor to a place where any prizefight or cockfight is advertised or represented to take place or who admits, sells, or gives to any minor a ticket or other paper by which that minor may be admitted to a place where a prizefight or cockfight is advertised to take place, is guilty of a misdemeanor, and is punishable by a fine not exceeding \$100 or by imprisonment in the county jail for not more than 25 days.

This bill would increase the fine in the case of cockfighting to an amount not to exceed \$500.

~~(2) Existing law provides that any person who does any specified acts pertaining to dogfighting is guilty of a felony and is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.~~

~~This bill would provide that the punishment would be 16 months, or 2 or 3 years, or by a fine of not less than \$10,000 nor more than \$50,000, or by both that fine and imprisonment, except in unusual circumstances where the interests of justice would be better served by imposition of a lesser sentence.~~

~~(3) Existing law provides that any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as specified, with the intent to be present at that exhibition, fighting, or injuring, is guilty of an offense punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that imprisonment and fine.~~

~~This bill would additionally provide that any fine imposed be a minimum of \$1,000.~~

~~(4) Existing law provides that specified acts involving animal fighting are a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine.~~

~~This bill would additionally provide that any fine imposed be a minimum of \$1,000.~~

~~(5) Existing law provides that any person who is knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or who is knowingly present at that exhibition or is knowingly present where preparations are being made for specified prohibited acts involving animal fighting, is guilty of a misdemeanor.~~

~~This bill would specify that any fine imposed for that misdemeanor would be a minimum of \$500.~~

~~(6)~~

~~(2) Existing law provides that it shall be unlawful for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing that animal to be pursued by a dog or dogs, and that any person violating any of those provisions is guilty of a misdemeanor.~~

~~This bill would provide that any fine imposed for that misdemeanor be in the amount of \$2,500.~~

~~(7) Existing law makes it an offense for anyone to manufacture, buy, sell, barter, exchange, or have in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp~~

~~implement designed to be attached in place of the natural spur of a gamecock or other fighting bird, and provides that a violation of this provision is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine and upon conviction thereof shall, in addition to any judgment or sentence imposed by the court, forfeit possession or ownership of those implements.~~

~~This bill would provide that any fine imposed for that misdemeanor would be a minimum of \$1,000.~~

~~(8) Existing law provides that any person who owns, possesses, keeps, or trains any bird or other animal, except a dog, with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting, as specified, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine. Existing law provides that a second or subsequent conviction is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year or by a fine not to exceed \$25,000, or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.~~

~~This bill would provide that any fine imposed for a first conviction for that misdemeanor be a minimum of \$1,000, and that for a second or subsequent conviction that any fine imposed would be a minimum of \$10,000.~~

~~(9)~~

~~(3) Existing law provides that the prosecuting agency in a criminal proceeding in which the defendant has been charged with the commission of any of certain crimes pertaining to dogfighting may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided, and that if the prosecuting agency has filed a petition for forfeiture and the defendant is convicted of any of those crimes, specified assets would be subject to forfeiture, as specified. The prosecuting agency for purposes of these provisions includes the Attorney General.~~

~~This bill would extend those provisions to criminal proceedings involving cockfighting.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

SECTION 1. Section 310 of the Penal Code is amended to read:

310. (a) Any minor under 16 years of age who visits or attends any prizefight or place where any prizefight is advertised to take place, and any owner, lessee, or proprietor, or the agent of any owner, lessee, or proprietor of any place where any prizefight is advertised or represented to take place who admits any minor to a place where any prizefight is advertised or represented to take place or who admits, sells, or gives to any minor a ticket or other paper by which that minor may be admitted to a place where a prizefight is advertised to take place, is guilty of a misdemeanor, and is punishable by a fine not exceeding one hundred dollars (\$100) or by imprisonment in the county jail for not more than 25 days.

(b) Any minor under 16 years of age who visits or attends any cockfight or place where any cockfight is advertised to take place, and any owner, lessee, or proprietor, or the agent of any owner, lessee, or proprietor of any place where any cockfight is advertised or represented to take place who admits any minor to a place where any cockfight is advertised or represented to take place or who admits, sells, or gives to any minor a ticket or other paper by which that minor may be admitted to a place where a cockfight is advertised to take place, is guilty of a misdemeanor, and is punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not more than 25 days.

SEC. 2. ~~Section 597.5 of the Penal Code is amended to read:~~

~~597.5. (a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not less than ten thousand dollars (\$10,000), nor more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment, except in unusual circumstances where the interests of justice would be better served by imposition of a lesser sentence:~~

~~(1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;~~

~~(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.~~

1 ~~(3) Permits any act in violation of paragraph (1) or (2) to be~~
2 ~~done on any premises under his or her charge or control, or aids~~
3 ~~or abets that act.~~

4 ~~(b) Any person who is knowingly present, as a spectator, at any~~
5 ~~place, building, or tenement where preparations are being made~~
6 ~~for an exhibition of the fighting of dogs, with the intent to be~~
7 ~~present at those preparations, or is knowingly present at that~~
8 ~~exhibition or at any other fighting or injuring as described in~~
9 ~~paragraph (2) of subdivision (a), with the intent to be present at~~
10 ~~that exhibition, fighting, or injuring, is guilty of an offense~~
11 ~~punishable by imprisonment in a county jail not to exceed one~~
12 ~~year, or by a fine of not less than one thousand dollars (\$1,000),~~
13 ~~nor more than five thousand dollars (\$5,000), or by both that~~
14 ~~imprisonment and fine.~~

15 ~~(c) Nothing in this section shall prohibit any of the following:~~

16 ~~(1) The use of dogs in the management of livestock, as defined~~
17 ~~by Section 14205 of the Food and Agricultural Code, by the owner~~
18 ~~of the livestock or his or her employees or agents or other persons~~
19 ~~in lawful custody thereof.~~

20 ~~(2) The use of dogs in hunting as permitted by the Fish and~~
21 ~~Game Code, including, but not limited to, Sections 4002 and 4756,~~
22 ~~and by the rules and regulations of the Fish and Game Commission.~~

23 ~~(3) The training of dogs or the use of equipment in the training~~
24 ~~of dogs for any purpose not prohibited by law.~~

25 ~~SEC. 3.— Section 597b of the Penal Code is amended to read:~~

26 ~~597b. (a) Except as provided in subdivisions (b) and (c), any~~
27 ~~person who, for amusement or gain, causes any bull, bear, or other~~
28 ~~animal, not including any dog, to fight with like kind of animal or~~
29 ~~creature, or causes any animal, including any dog, to fight with a~~
30 ~~different kind of animal or creature, or with any human being, or~~
31 ~~who, for amusement or gain, worries or injures any bull, bear, dog,~~
32 ~~or other animal, or causes any bull, bear, or other animal, not~~
33 ~~including any dog, to worry or injure each other, or any person~~
34 ~~who permits the same to be done on any premises under his or her~~
35 ~~charge or control, or any person who aids or abets the fighting or~~
36 ~~worrying of an animal or creature, is guilty of a misdemeanor~~
37 ~~punishable by imprisonment in a county jail for a period not to~~
38 ~~exceed one year, by a fine of not less than one thousand dollars~~
39 ~~(\$1,000), nor more than five thousand dollars (\$5,000), or by both~~
40 ~~that imprisonment and fine.~~

~~(b) Any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine of not less than one thousand dollars (\$1,000), nor more than five thousand dollars (\$5,000), or by both that imprisonment and fine.~~

~~(c) A second or subsequent conviction of this section is a misdemeanor or a felony punishable by imprisonment in a county jail for a period not to exceed one year or the state prison for 16 months, two, or three years, by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.~~

~~(d) For the purposes of this section, aiding and abetting a violation of this section shall consist of something more than merely being present or a spectator at a place where a violation is occurring.~~

~~SEC. 4. Section 597e of the Penal Code is amended to read:~~

~~597e. Any person who is knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or who is knowingly present at that exhibition or is knowingly present where preparations are being made for the acts described in subdivision (a) or (b) of Section 597b, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine of not less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000), or by both that imprisonment and fine.~~

~~SEC. 5.~~

~~SEC. 2. Section 597h of the Penal Code is amended to read:~~

~~597h. (a) It shall be unlawful for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing that animal to be pursued by a dog or dogs.~~

~~(b) Any person violating any of the provisions of this section shall be guilty of a misdemeanor punishable by a fine of two~~

1 thousand five hundred dollars (\$2,500) or by imprisonment in a
2 county jail not exceeding six months, or by both that imprisonment
3 and fine.

4 SEC. 6. Section 597i of the Penal Code is amended to read:

5 597i. (a) It shall be unlawful for anyone to manufacture, buy,
6 sell, barter, exchange, or have in his or her possession any of the
7 implements commonly known as gaffs or slashers, or any other
8 sharp implement designed to be attached in place of the natural
9 spur of a gamecock or other fighting bird.

10 (b) Any person who violates any of the provisions of this section
11 is guilty of a misdemeanor punishable by imprisonment in a county
12 jail for a period not to exceed one year, by a fine of not less than
13 one thousand dollars (\$1,000) nor more than five thousand dollars
14 (\$5,000), or by both that imprisonment and fine and upon
15 conviction thereof shall, in addition to any judgment or sentence
16 imposed by the court, forfeit possession or ownership of those
17 implements.

18 SEC. 7. Section 597j of the Penal Code is amended to read:

19 597j. (a) Any person who owns, possesses, keeps, or trains
20 any bird or other animal with the intent that it be used or engaged
21 by himself or herself, by his or her vendee, or by any other person
22 in an exhibition of fighting as described in Section 597b is guilty
23 of a misdemeanor punishable by imprisonment in a county jail for
24 a period not to exceed one year, by a fine of not less than one
25 thousand dollars (\$1,000), nor more than five thousand dollars
26 (\$5,000), or by both that imprisonment and fine.

27 (b) This section shall not apply to an exhibition of fighting of
28 a dog with another dog.

29 (c) A second or subsequent conviction of this section is a
30 misdemeanor punishable by imprisonment in a county jail for a
31 period not to exceed one year or by a fine of not less than ten
32 thousand dollars (\$10,000), nor more than twenty-five thousand
33 dollars (\$25,000), or by both that imprisonment and fine, except
34 in unusual circumstances in which the interests of justice would
35 be better served by the imposition of a lesser sentence.

36 SEC. 8.

37 SEC. 3. Section 598.1 of the Penal Code is amended to read:

38 598.1. (a) The prosecuting agency in a criminal proceeding
39 in which the defendant has been charged with the commission of
40 any of the crimes listed in subdivision (a) of Section 597.5 or

subdivision (b) of Section 597b may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided in subdivision (c). If the prosecuting agency has filed a petition for forfeiture pursuant to subdivision (c) and the defendant is convicted of any of the crimes described in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b, the assets listed in subdivision (b) shall be subject to forfeiture upon proof of the elements of subdivision (b) and in accordance with this section.

(b) (1) Any property interest, whether tangible or intangible, that was acquired through the commission of any of the crimes listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by cockfighting or dogfighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting birds or fighting dogs, and persons who steal or illegally obtain dogs or other animals for fighting, including bait and sparring animals.

(2) Notwithstanding paragraph (1), the following property shall not be subject to forfeiture under this section:

(A) Property solely owned by a bona fide purchaser for value, who was without knowledge that the property was intended to be used for a purpose which would subject it to forfeiture under this section, or is subject to forfeiture under this section.

(B) Property used as a family residence and owned by two or more inhabitants, one of whom had no knowledge of its unlawful use.

(c) (1) If the prosecuting agency proceeds under subdivision (a), that agency shall, in conjunction with the criminal proceeding, file a petition for forfeiture with the superior court of the county in which the defendant has been charged with the commission of any of the crimes listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b, that shall allege that the defendant has committed those crimes and the property is forfeitable pursuant to subdivision (a).

(2) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds, and that notice shall state that any interested party may file a verified claim with the

1 superior court stating the amount of the party's claimed interest
2 and an affirmation or denial of the prosecuting agency's allegation.

3 (3) If the notices cannot be served by registered mail or personal
4 delivery, the notices shall be published for at least three consecutive
5 weeks in a newspaper of general circulation in the county where
6 the property is located.

7 (4) If the property alleged to be subject to forfeiture is real
8 property, the prosecuting agency shall, at the time of filing the
9 petition for forfeiture, record a lis pendens in each county in which
10 real property alleged to be subject to forfeiture is located.

11 (5) The judgment of forfeiture shall not affect the interest of
12 any third party in real property that was acquired prior to the
13 recording of the lis pendens.

14 (6) All notices shall set forth the time within which a claim of
15 interest in the property seized is required to be filed pursuant to
16 this section.

17 (d) Any person claiming an interest in the property or proceeds
18 seized may, at any time within 30 days from the date of the first
19 publication of the notice of seizure, or within 30 days after receipt
20 of the actual notice, file with the superior court of the county in
21 which the action is pending a verified claim stating his or her
22 interest in the property or proceeds. A verified copy of the claim
23 shall be given by the claimant to the Attorney General, or the
24 district or city attorney, whichever is the prosecuting agency of
25 the underlying crime.

26 (e) (1) If, at the end of the time set forth in subdivision (d), an
27 interested person, other than the defendant, has not filed a claim,
28 the court, upon a motion, shall declare that the person has defaulted
29 upon his or her alleged interest, and that interest shall be subject
30 to forfeiture upon proof of the elements of subdivision (b).

31 (2) The defendant may admit or deny that the property is subject
32 to forfeiture pursuant to this section. If the defendant fails to admit
33 or deny, or fails to file a claim of interest in the property or
34 proceeds, the court shall enter a response of denial on behalf of
35 the defendant.

36 (f) (1) The forfeiture proceeding shall be set for hearing in the
37 superior court in which the underlying criminal offense will be
38 tried.

39 (2) If the defendant is found guilty of the underlying offense,
40 the issue of forfeiture shall be promptly tried, either before the

1 same jury or before a new jury in the discretion of the court, unless
2 waived by the consent of all parties.

3 (g) At the forfeiture hearing, the prosecuting agency shall have
4 the burden of establishing beyond a reasonable doubt that the
5 defendant was engaged in any of the crimes described in
6 subdivision (a) of Section 597.5 or subdivision (b) of Section 597b
7 and that the property comes within the provisions of subdivision
8 (b).

9 (h) Concurrent with, or subsequent to, the filing of the petition,
10 the prosecuting agency may move the superior court for the
11 following pendente lite orders to preserve the status quo of the
12 property alleged in the petition of forfeiture:

13 (1) An injunction to restrain all interested parties and enjoin
14 them from transferring, encumbering, hypothecating, or otherwise
15 disposing of that property.

16 (2) Appointment of a receiver to take possession of, care for,
17 manage, and operate the assets and properties so that the property
18 may be maintained and preserved.

19 (i) (1) No preliminary injunction may be granted or receiver
20 appointed without notice to the interested parties and a hearing to
21 determine that the order is necessary to preserve the property,
22 pending the outcome of the criminal proceedings, and that there
23 is probable cause to believe that the property alleged in the
24 forfeiture proceedings are proceeds or property interests forfeitable
25 under subdivision (a). However, a temporary restraining order may
26 issue pending that hearing pursuant to the provisions of Section
27 527 of the Code of Civil Procedure.

28 (2) Notwithstanding any other provision of law, the court, when
29 granting or issuing these orders may order a surety bond or
30 undertaking to preserve the property interests of the interested
31 parties. The court shall, in making its orders, seek to protect the
32 interest of those who may be involved in the same enterprise as
33 the defendant, but who are not involved in any of the crimes
34 described in subdivision (a) of Section 597.5 or subdivision (b) of
35 Section 597b.

36 (j) If the trier of fact at the forfeiture hearing finds that the
37 alleged property or proceeds are forfeitable pursuant to subdivision
38 (a), and that the defendant was convicted of a crime listed in
39 subdivision (a) of Section 597.5 or subdivision (b) of Section 597b,
40 the court shall declare that property or proceeds forfeited to the

1 state or local governmental entity, subject to distribution as
2 provided in subdivision (l).

3 (k) (1) If the trier of fact at the forfeiture hearing finds that the
4 alleged property is forfeitable pursuant to subdivision (a) but does
5 not find that a person holding a valid lien, mortgage, security
6 interest, or interest under a conditional sales contract acquired that
7 interest with actual knowledge that the property was to be used
8 for a purpose for which forfeiture is permitted, and the amount
9 due to that person is less than the appraised value of the property,
10 that person may pay to the state or the local governmental entity
11 that initiated the forfeiture proceeding the amount of the registered
12 owner's equity, which shall be deemed to be the difference between
13 the appraised value and the amount of the lien, mortgage, security
14 interest, or interest under a conditional sales contract. Upon that
15 payment, the state or local governmental entity shall relinquish all
16 claims to the property.

17 (2) If the holder of the interest elects not to make that payment
18 to the state or local governmental entity, the property shall be
19 deemed forfeited to the state or local governmental entity.

20 (3) The appraised value shall be determined as of the date
21 judgment is entered either by agreement between the legal owner
22 and the governmental entity involved, or if they cannot agree, then
23 by a court-appointed appraiser for the county in which the action
24 is brought.

25 (4) If the amount due to a person holding a valid lien, mortgage,
26 security interest, or interest under a conditional sales contract is
27 less than the value of the property and the person elects not to
28 make payment to the governmental entity, the property shall be
29 sold at public auction by the Department of General Services or
30 by the local governmental entity which shall provide notice of that
31 sale by one publication in a newspaper published and circulated
32 in the city, community, or locality where the sale is to take place.
33 Proceeds of the sale shall be distributed pursuant to subdivision
34 (l).

35 (l) Notwithstanding that no response or claim has been filed
36 pursuant to subdivision (d), in all cases where property is forfeited
37 pursuant to this section and is sold by the Department of General
38 Services or a local governmental entity, the property forfeited or
39 the proceeds of the sale shall be distributed by the state or local
40 governmental entity, as follows:

1 (1) To the bona fide or innocent purchaser, conditional sales
2 vendor, or holder of a valid lien, mortgage, or security interest, if
3 any, up to the amount of his or her interest in the property or
4 proceeds, when the court declaring the forfeiture orders a
5 distribution to that person. The court shall endeavor to discover
6 all those lienholders and protect their interests and may, at its
7 discretion, order the proceeds placed in escrow for a period not to
8 exceed 60 additional days to ensure that all valid claims are
9 received and processed.

10 (2) To the Department of General Services or local governmental
11 entity for all expenditures made or incurred by it in connection
12 with the sale of the property, including expenditures for any
13 necessary repairs, storage, or transportation of any property seized
14 under this section.

15 (3) To local nonprofit organizations exempt under Section
16 501(c)(3) of the Internal Revenue Code, the primary activities of
17 which include ongoing rescue, foster, or other care of animals that
18 are the victims of cockfighting or dogfighting, and to law
19 enforcement entities, including multiagency task forces, that
20 actively investigate and prosecute animal fighting crimes.

21 (4) Any remaining funds not fully distributed to organizations
22 or entities pursuant to paragraph (3) shall be deposited in an escrow
23 account or restricted fund to be distributed as soon as possible in
24 accordance with paragraph (3).